

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION**

OLLIE JUNIOR SMITH,)	
)	
Plaintiff,)	
)	
v.)	Case No.: 5:19-cv-00948-RDP-JEO
)	
ALABAMA DEPARTMENT OF)	
CORRECTIONS, et al.,)	
)	
Defendants.)	

ORDER

On June 21, 2019, the undersigned ordered the plaintiff to pay an initial partial filing fee of \$37.50 and to sign and return the Prisoner Consent Form attached to that order within thirty (30) days.¹ (Doc. 3 at 2). The undersigned warned the plaintiff that failure to comply with the order within the prescribed time may result in dismissal of the complaint without further notice. (*Id.*). More than thirty days elapsed, and the plaintiff failed to comply with or respond to the order.

On July 29, 2019, the undersigned entered a report recommending this action be dismissed without prejudice for the plaintiff's failure to prosecute. (Doc. 4). On August 8, 2019, the plaintiff filed objections to the report and recommendation. (Doc. 5). The plaintiff alleged he never received a Prisoner

¹ The report and recommendation incorrectly stated that the plaintiff was ordered to pay an initial partial filing fee of \$9.31. (Doc. 4 at 2). However, his prison account balance for the previous six months was \$9.31. (Doc. 3 at 1). The plaintiff's initial partial filing fee was \$37.50. (*Id.*).

Consent Form or “any paperwork stating that he is to pay a partial filing fee.” (Doc. 5).

On August 12, 2019, the undersigned directed the Clerk to resend the plaintiff a copy of the June 21, 2019 order and ordered him to pay an initial partial filing fee of \$37.50 and return the Prisoner Consent Form to the court within twenty days. (Doc. 6). On September 11, 2019, the plaintiff returned a signed Prisoner Consent Form and notified the court that he had been released from prison. (Docs. 7, 8).

Based on the foregoing, the undersigned **WITHDRAWS** the report and recommendation entered July 29, 2019, recommending this action be dismissed for failure to prosecute.

DATED this 28th day of September, 2019.

A handwritten signature in dark ink, appearing to read "John E. Ott", is written over a horizontal line.

JOHN E. OTT
Chief United States Magistrate Judge